

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

NORTH AMERICAN PRECAST, INC. and  
WISEMAN CONSTRUCTION, INC.

Plaintiffs,

v.

CIVIL ACTION NO. 2:04-1306

GENERAL CASUALTY COMPANY OF WISCONSIN,  
a Wisconsin corporation

Defendant.

MEMORANDUM OPINION AND ORDER

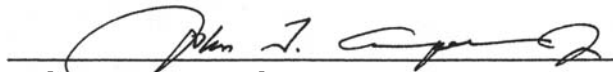
The memorandum opinion and order entered March 31, 2008, granted defendant's motion for summary judgment on the issue of coverage, finding no coverage. The parties have stipulated that the duty to defend "in the underlying litigation depends upon the existence of coverage for the allegations asserted against North American Precast, Inc. in the underlying action, and is controlled by the same factors addressed by the Court in its Memorandum Opinion on the issue of coverage." It appearing that the plank said to have triggered the accident or occurrence in this litigation collapsed while being removed from the delivery truck without damaging the property in which it was

to have been installed, the court finds it plain that there was no duty to defend.

Inasmuch as Count I seeks a declaratory judgment that coverage existed and that there was a duty to defend and inasmuch further as Count II seeks a contractual remedy for the alleged failures of the defendant to provide insurance coverage and defend, it is ORDERED that Counts I and II be, and they hereby are, dismissed with prejudice. The parties having further stipulated to the dismissal of Count III without prejudice, it is ORDERED that Count III be, and it hereby is, dismissed without prejudice.

The Clerk is directed to forward copies of this memorandum opinion and order to all counsel of record.

DATED: August 13, 2008

  
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John T. Copenhaver, Jr.  
United States District Judge